

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court		District of Hawaii	SEP 12 2007 at 11 o'clock and 10 min. A.M. SUE BEITIA, CLERK
Name (under which you were convicted): ERIC K. HO		Docket or Case No.: 05-00027-JMS	
Place of Confinement: TERMINAL ISLAND ENGLEWOOD, CO		Prisoner No.: 95353022	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) ERIC K. HO	
v.			

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: U.S. District Court of Hawaii
- (b) Criminal docket or case number (if you know): 05-00027
- (a) Date of the judgment of conviction (if you know): MARCH 9, 2006
- (b) Date of sentencing: MARCH 3, 2006
- Length of sentence: 180 months
- Nature of crime (all counts): Conspiracy, (Dist. Meth 50 or more grams)
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ N/A Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:
- (1) Docket or case number (if you know): _____
- (2) Result: _____
- _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: I asked my lawyer to file and he said he would but did not. He said I had no grounds for an appeal. But he didn't do anything for me. (insufficient counsel)

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Terminal Illness

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I have a Terminal Illness in which the Lawyer knew about but still didn't file any motion for Downwards. It's called Joseph Merckdo disease. All he did was bring it up a sentencing. He didn't properly file any motions for downward etc. Nor did I get any.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: He didn't raise the issue enough. The day of sentencing was the first time my judge heard anything about it.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: ADMEMDMENT 506 of The Guidelines

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In this Admemdment it talks about being enhanced
twice, or double counting, in my P.S.I. I was clearly
enhanced when I shouldn't have been. My Lawyer didn't
even put any objections in toward my P.S.I.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I'm trying to get my Appeal rights back

I WOULD LIKE TO APEAL MY SENTENCING

GROUND THREE: I Told my Lawyer to file for my Rights to
Appeal, he said he would then he didn't do it.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: IN MY P.S.I IT HAS ME AT Manager role?

Also there was No dope found on me, which would make it generic

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was not a manager of Anything
No dope was found on me, the only reason I pled
guilty was because my Lawyer told me I would only get
10 yrs.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: CRAIG KIMSEL

(b) At arraignment and plea: CRAIG KIMSEL

(c) At trial: _____

(d) At sentencing: CRAIG KIMSEL

(e) On appeal: I'm asking for my Appeal rights back.

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: I'm asking for my Appeal Rights back

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: MARCH 3, 2006

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☒ N/A

yes

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

I WAS STUCK IN TRANSIT, AND I
 WAS IN THE HOLE. AND I WAS WAITING FOR
 SOMEONE TO GO OVER THESE PAPERS WITH ME.
 WHICH DIDN'T HAPPEN

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: Please Allow me
to Appeal my Sentencing

or any other relief to which movant may be entitled.

[Signature]
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 6-07-06
_____ (month, date, year).

Executed (signed) on 6-16-06 (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *

To: Terminal Island Medical Department
From: Donalei K Ho (Mother of Eric K Ho)
Re: Eric K .Ho #95353-022

MACHADO JOSEPH DISEASE

Machado-Joseph Disease is a genetic disorder of the central nervous system that cripples and paralyzes. Symptoms appear when a defective gene causes a breakdown and there is a loss of cells in specific areas of the brain. In 1994 a Japanese research team reported isolating and cloning the MJD gene. As a result a genetic marker for MJD is available for those persons at-risk or those who suspect they may be affected with this disorder.

Today, Machado-Joseph disease is also known as Spino-cerebellar Ataxia, Type 3, or SCA/3, a common hereditary ataxia. Unfortunately, Machado-Joseph Disease has been known to be missed diagnosed as Parkinson's disease, Multiple Sclerosis, Huntington's disease and other forms of neurological disorders.

There is no known cure for MJD at this time.

MJD Research

Research is on going! Scientists world-wide continue to strive to find treatment and a cure for MJD; eventually leading to prevention of Machado Joseph Disease. Please see Ataxia MJD Research Project

Genetic Marker Persons at-risk or those who suspect they may be affected from MJD can now have their blood tested to see if they carry the defective gene. There is also suggested protocol before genetic testing takes place. IJDF can help assist you in locating who to contact for this test.

Prepared by Office of Scientific and Health Reports
National Institute of Neurological and Communicative Disorders and Stroke
Bethesda, Maryland 20892

Where are families found with Machado Joseph Disease? It was first thought that MJD was only found in individuals of Portuguese ancestry, but today MJD has spread world-wide. MJD can be found in the United States, Azores Islands, Portugal, Brazil, France, Germany, England, Canada, Japan, China, Italy, India, Angola, Spain, Holland, Finland, Ukraine, Suriname, Belgium, Mexico, Macau, Syria, Taiwan, Australia, Turkey, and Israel. MJD is being discovered in other parts of the world as well.

Where to get help In California there is the GHPP Genetic Handicap Persons Program this program can financially help with medical care, medical equipment, drug prescriptions and support. In addition through-out the USA each state has individual support. World wide each country has their own protocol in helping MJD patients and their families.

Please contact IJDF for more information in locating a program that may help assist your needs.

To: Terminal Island Medical Department
From: Donalei K Ho (Mother of Eric K Ho)
Re: **Eric K .Ho #95353-022**

Symptoms & Diagnosis

weakness in the arms and legs
spasticity
staggering, lurching gait, easily mistaken for drunkenness
difficulty with speech and swallowing
involuntary eye movements
double vision
frequent urination

Symptoms most commonly begin between the ages of 15 and 40, but may appear earlier or much later in life. Progression may be fast or slow, and life expectancy ranges from 10-30 years after the disease begins. Neurologists have classified MJD into three types, depending on age at onset and characteristic symptoms.

Machado Joseph Disease is an autosomal dominant disorder. This means that each child of an affected parent has a 50 percent chance of inheriting the defective gene. MJD does not skip generations, but people at risk who escape the disease will not pass it on to their children or future generations. As with any inherited disorder, MJD is not contagious and cannot be "caught" by people who are not at risk.

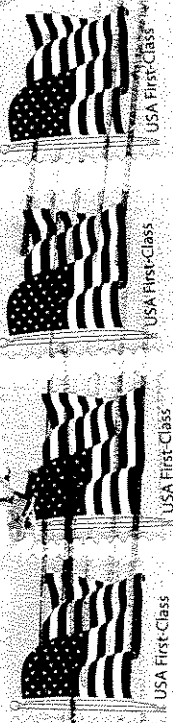
International Joseph Disease Foundation Make a Donation

The International Joseph Diseases Foundation (IJDF) has been a 501 (C) 3 non-profit charitable corporation since formed in 1977. The IJDF mission was to educate and locate individuals and families, worldwide, who maybe afflicted with Machado Joseph Disease (MJD). Over the years the IJDF has shared an active and vital role in the Machado Joseph Disease story. Founder Rose Marie Silva is to be commended for her amazing efforts in bringing about Machado Joseph Disease recognition worldwide. As in life, there is a time and season for everything. For this reason the Executive Board of Directors of the IJDF have voted that it is now time for the International Joseph Diseases Foundation to close its doors and dissolve its Nonprofit Corporation status.

This website is being maintained free of charge and will still provide updated information on Machado Joseph Disease, however, the International Joseph Diseases Foundation will no longer be in existence and will not accept any type of donations.

Donations for Machado Joseph Disease may be made to:
Ataxia MJD Research Project, Inc.
1425 Alvarado Avenue
Burlingame, CA 94010

ERIC K HO #95353-022
FEDERAL CORRECTIONAL INST.
9595 W QUINCY AVE.
LITTLETON CO. 80123



CLERK UNITED STATES DISTRICT COURT FOR
DIST OF HAWAII

300 ALOHA BOULEVARD, RM. 2-228
HONOLULU - 96850-0338